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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,188	12/15/2003	Katherine S. Bowdish	ALEX-P03-060	4387

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EXAMINER	
DUFFY, BRADLEY	
ART UNIT	PAPER NUMBER
1643	

MAIL DATE	DELIVERY MODE
06/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/736,188	BOWDISH ET AL.	
	Examiner	Art Unit	
	BRADLEY DUFFY	1643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: See *Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *19,21,43,52 and 53*.
   Claim(s) withdrawn from consideration: *44, 45, 54, 55 and 71-78*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 3/31/08, 4/22/08, 4/30/08

13. ☒ Other: See Continuation Sheet.

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643

Continuation of 3. NOTE: Entry of the proposed amendment would raise new issues that would require further search and/or consideration because, if entered, for example, claim 1 would be amended from a "method of treating CLL" to a "method of inhibiting the downregulation on IL-2 or IFN-gamma in a CLL patient". Accordingly, because the recited method no longer intends to treat CLL, the claims would require further consideration for 112, first paragraph compliance, in particular, to consider the enablement of such an intended use. Furthermore, amending the claims to recite such an intended use may introduce new matter and would require further consideration for that reason as well. Additionally, for example, claim 1 has been amended to recite human OX-2/CD200 "which is upregulated on CLL cells" and this addition would require further consideration for 112, first paragraph compliance, to determine if, for example, the specification adequately describes "human OX-2/CD200 which is upregulated on CLL cells". Finally, claim 1 has been amended to recite the limitation "the downregulation of IL-2 or IFN-gamma" which, for example, would require further consideration for 112, second paragraph compliance because the metes and bounds of the such a limitation is not immediately apparent. For example, IL-2 might be downregulated by a decrease in expression, a decrease in activity, an increase in inactivation, or by some other mechanism, and it is unclear which, if any, of these mechanisms might be inhibited by the recited antibody or antigen-binding fragment thereof. For theses reasons, entry of the proposed amendment would raise new issues that would require further search and/or consideration and may introduce new matter. Accordingly, the amendment is not deemed to place this application in better form for appeal by materially reducing or simplifying the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration is predicated upon entry of the proposed amendment, and as the amendment has not been entered, Applicant's request is presently moot.

Continuation of 13. Other: Reference CN3 on the IDS filed 3/31/08 was crossed-out because it is a duplicate of a citation on the IDS filed 5/22/06.

The information disclosure statement filed April 22, 2008, which cites reference CP3, fails to comply with the provisions of 37 CFR §§ 1.97 and 1.98, and/or MPEP § 609. In this case, the information disclosure statement letter at page 1 requests that the Examiner consider the documents listed "in accordance with 37 CFR 1.97(c) and (e)(1) or (b)(3)". However, 37 CFR § 1.97(c) refers to information disclosure statements "filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application", while 37 CFR § 1.97(b)(3) refers to information disclosure statements filed "[b]efore the mailing of a first Office action on the merits"; yet this information disclosure statement was filed after a final action. Additionally, the information disclosure statement letter contains the statement at page 2 "that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement". However, in contradiction, the Information Disclosure Statement letter states at page 1, that "Applicant(s) have become aware of the following documents, cited in an International Search Report issued March 19, 2008, during the prosecution of International Application No. PCT/US2005/25488". Notably, MPEP § 609.04(b) indicates that a 37 CFR § 1.97 (e)(1) statement can be made in an IDS submission when the search report is "from a patent office outside the U.S. in a counterpart foreign application not more than 3 months prior to the filing date of the statement". Furthermore, MPEP 609.04(b) states that "[t]he term counterpart foreign patent application means that a claim for priority has been made in either the U.S. application or a foreign application based on the other, or that the disclosures of the U.S. and foreign patent applications are substantively identical (e.g., an application filed in the European Patent Office claiming the same U.K. priority as claimed in the U.S. application)". Accordingly, since PCT/US2005/25488 was examined in this Office, it is apparent that this International Application is not a "counterpart foreign application" as set forth in 37 CFR § 1.97 (e)(1). Therefore, it is submitted that this information disclosure statement filed April 22, 2008 fails to comply with the provisions of 37 CFR §§ 1.97 and 1.98, and/or MPEP § 609. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR § 1.97(e). See MPEP § 609.05(a).